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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,999	08/22/2003	Steven Ausnit	769-222 Div. 7	1117

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EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/646,999	Applicant(s) AUSNIT, STEVEN	
	Examiner John Sipos	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40 and 41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 40 and 41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DOUBLE PATENTING

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Claims 40 and 41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over US Patent Nos. 6,694,704, claim 1. Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims to be obvious variants of the claim of the patent. Claim 1 of the patent and the claims of the present application are directed to method of attaching a fastener proximate a cutout in a film. While the claims of the present application and the claims of the patents may vary in scope and terminology, the additional limitations and differences of the patented claim would have been obvious eliminations to one having ordinary skill in the art.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40 and 41 are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the attaching of the first strip to the web "thereby forming a first wall of the bag". This is incorrect in that the "attaching" does not form a bag wall. It is the longitudinal folding of the web that forms the bag walls. Furthermore, at this point in the process a "bag" has not been formed. In fact, bags are not formed in the claimed process since no sealing steps are recited that would be required to complete the formation of a bag. It is suggested that the above phrase be deleted and in line 9, after "thereby", a phrase such as --forming a first wall where said first strip is attached and-- be inserted.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claim 40 is rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to McMahon (4,909,017) in view of Bahr (4,335,817 – previously cited) or Sullivan (4,620,320). The patent to McMahon shows the moving of a film 10,50, providing a fastener 41,51 comprising of two interlocked strips, attaching the first strip of the fastener at 13 crosswise to the film, to the web portion that will form the first side of the bag, subsequently bringing together the longitudinal edges of the film (Figures 3 and 7) thereby forming opposing first and second walls

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and attaching the second strip of the fastener to the second wall at 31,32. The McMahon operation lacks the use of a fastener on the slider.

The patents to Bahr and Sullivan show the forming bags by attaching a fastener that includes a slider to a film to ease the opening and closing of the bag by the consumer. It would have been obvious to one skilled in the art to provide the fastener of McMahon with a slider as shown by Bahr or Sullivan to aid the opening and closing of the bag.


ALLOWABLE SUBJECT MATTER

Claim 41 would be allowable if a terminal disclaimer is submitted.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.


John Sipos
Primary Examiner
Art Unit 3721

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